UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STADIUM CAPITAL LLC, on behalf of itself and all others similarly situated, Plaintiff, v. CO-DIAGNOSTICS, INC., DWIGHT H. EGAN, and BRIAN L. BROWN, Defendants.	Case No.: 22-cv-6978 (AS) CLASS ACTION **CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS** JURY TRIAL DEMANDED

TABLE OF CONTENTS

Page(s)

Plaintiff Stadium Capital LLC ("Plaintiff"), by its attorneys, on behalf of itself and all others similarly situated, alleges the following based upon the investigation by Plaintiff's counsel, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge. The investigation by counsel included, among other things, a review of Co-Diagnostics, Inc's ("Co-Dx" or the "Company") public filings with the United States Securities and Exchange Commission ("SEC"), press releases issued by the Company, public conference calls, media and news reports about the Company, and publicly available trading data relating to the price and volume of Co-Dx securities.

I. INTRODUCTION

1. This action is a securities action brought under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the SEC, brought by Plaintiff on behalf of a class of all persons and entities who purchased the publicly traded securities of Co-Dx during the period May 12, 2022 through the close of the market on August 11, 2022 (4:00 p.m. ET), inclusive (the "Class Period").

2. Co-Dx purports to develop, manufacture and sell reagents used for (and that comprise) its proprietary diagnostic polymerase chain reaction ("PCR") tests that function via the detection and/or analysis of nucleic acid molecules (DNA or RNA), including robust and innovative molecular tools for detection of infectious diseases, liquid biopsy for cancer screening, and agricultural applications. In connection with the sale of its PCR tests, Co-Dx also sells diagnostic equipment from other manufacturers as self-contained lab systems, which Co-Dx refers to as its "MDx Device", to labs and diagnostic centers in order to facilitate usage of its test. The MDx Device is a thermocycler, which is a device most commonly used to help automate the PCR process (a laboratory technique of molecular biology used to amplify a target DNA sequence to millions of copies).

3. On December 31, 2019, the World Health Organization ("WHO") was informed of cases of pneumonia in Wuhan, China, with no known cause. On January 7, 2020, public health officials in China identified a novel coronavirus as the causative agent of the outbreak. On January 10, the WHO began using the phrase "2019 Novel Coronavirus" to refer to the disease causing the outbreak ("COVID-19"). Just weeks later, on January 23, 2020, Co-Dx announced that it had developed a COVID-19 diagnostics test intended to address the potential need for detection of the virus.

4. On February 24, 2020, Co-Dx announced that its Logix Smart™ COVID-19 Test received a CE-marking, allowing it to be sold in the European market and other markets that accept CE-marking as valid regulatory approval. On April 6, 2020, Co-Dx announced that it had received an Emergency Use Authorization for its Logix Smart™ COVID-19 detection test from the Food and Drug Administration, allowing it to commence sales of the test to laboratories certified by the Center for Medicare and Medicaid Services under the Clinical Laboratories Improvements Act ("CLIA") to accept human samples for diagnostics testing throughout the United States. Co-Dx has sold its Logix Smart™ COVID-19 Test to such CLIA labs since that time.

5. Upon commencing sales, its Logix Smart™ COVID-19 Test immediately accounted for nearly 100% of the Company's revenues and Defendants (as defined herein) have admitted on conference calls with investors as analysts that they are "able to monitor the daily influx of demand for [their] tests" and that it was something they "ke[pt] a close eye on every day."

6. However, despite tracking this information daily, during the Class Period Defendants repeatedly touted its Logix Smart™ COVID-19 Test, reassuring investors about the

demand for the product. At the same time, Defendants failed to disclose that: (1) demand for its Logix Smart™ COVID-19 Test had plummeted throughout the quarter ended June 30, 2022, and (2) as a result, Defendants' positive statements about the demand for its Logix Smart™ COVID-19 Test lacked a reasonable basis. For the same reasons, Defendants' positive statements about the Company's prospects, including continuing year-over-year revenue growth and ability to maintain its Adjusted EBITDA were materially misleading and lacked a reasonable basis.

7. On August 11, 2022, Co-Dx shocked investors when, after the market closed, the Company issued a press release and filed a report with the SEC on Form 8-K that disclosed its financial results for the quarter ended June 30, 2022, in which the Company disclosed revenue of just $5.0 million for the quarter ended June 30, 2022, down from $27.4 million during the prior year period, a decline of almost 82%. The Company primarily attributed the decrease to lower demand of its Logix Smart™ COVID-19 Test.

8. On this news, the price of Co-Dx's common stock declined $1.98, or 30.65%, from a closing price of $6.46 per share on August 11, 2022, to close at $4.48 per share on August 12, 2022.

9. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common stock, Plaintiff and other Class members have suffered significant losses and damages.

II. JURISDICTION AND VENUE

10. The claims asserted arise under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Jurisdiction is conferred by Section 27 of the Exchange Act. Venue is proper pursuant to Section 27 of Exchange Act because Co-Dx's common stock traded on the Nasdaq exchange in this district throughout the Class Period and Defendants made materially false and misleading representations to investors that were disseminated to investors

in this District.

11. In connection with the material misrepresentations of facts and omissions alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

III. THE PARTIES

12. Plaintiff purchased Co-Dx's publicly traded common stock as detailed in the Certification previously filed with the Court (ECF No. 1 at 16-17), and was damaged thereby.

13. Defendant Co-Dx is incorporated in Utah and its headquarters are located at 2401 S. Foothill Drive, Salt Lake City, Utah 84109. The Company's common stock is listed on the Nasdaq under the ticker symbol "CODX."

14. Defendant Dwight H. Egan ("Egan") joined the Company as an officer and director in April 2013. Defendant Egan is, and has served as the Company's Chief Executive Officer, President and Chairman of the Board throughout the Class Period. Defendant Egan signed Co-Diagnostics' quarterly report on Form 10-Q for the period ended March 31, 2022 (the "Q1 2022 10-Q") filed on May 12, 2022.

15. Defendant Brian L. Brown ("Brown") joined the Company in February 2021. Defendant Brown is, and has served as the Company's Chief Financial Officer and Secretary throughout the Class Period. Defendant Brown signed Co-Diagnostics' Current Report on Form 8-K filed on May 12, 2022, and the Q1 2022 10-Q.

16. Defendants Egan and Brown are referred to herein as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Co-Dx's reports to the SEC, press releases, and presentations to securities analysts, money portfolio managers and institutional

investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

17. Co-Dx and the Individual Defendants are referred to collectively as "Defendants".

IV. SUBSTANTIVE ALLEGATIONS

A. Company Background

18. Co-Diagnostics was formed on April 18, 2013, as a Utah corporation. Upon information and belief, the Company was formed to monetize the DNA-testing technology developed by Biomedical Engineering PhD Brent Satterfield ("Satterfield").

19. After several years of operating as a "start-up" in the private sector, Co-Diagnostics filed a Registration Statement on Form S-1 on April 28, 2017, with an attached prospectus.

20. The prospectus described that the Company owned proprietary technology that enabled it to do DNA testing for diagnostic purposes and that, using its proprietary test design system and proprietary reagents, it will design and sell PCR diagnostic tests for diseases and pathogens starting with tests for tuberculosis, a drug resistant tuberculosis test, hepatitis B and C, Malaria, dengue, HIV and Zika virus.

21. The prospectus stated that, as of 2017, Co-Dx's primary source of revenue

would be from selling diagnostics tests for Zika Virus, Tuberculosis, Hepatitis B, Hepatitis C, Malaria, Dengue Fever, and HIV, and that its customers were primarily located in the Caribbean, Central and South America, and India.

22. The Company forecasted that it would be authorized to sell Tuberculosis, Hepatitis B, and Hepatitis C tests in the European Union in 2018 and 2019.

23. The stock first listed on the NASDAQ exchange on July 12, 2017 and opened at $6. The stock slowly slid down in price to become a "penny stock" trading at less than $1 per share for extended periods. The stock closed on December 31, 2019 at $0.8952 per share.

24. Co-Diagnostics was in danger of being delisted from the NASDAQ, which requires that companies not trade below $1.00 per share to continue being listed on the exchange.

B. Defendants Luck Into Their Best Possible Opportunity as the World Begins to Reel from the COVID-19 Pandemic

25. In December 2019, a new virus began to spread rapidly throughout Asia. That virus, which became known as COVID-19, has ravaged the world's economies and healthcare systems, and has resulted in hundreds of millions of infections and millions of deaths. COVID-19 is a virus and can be detected by DNA-based testing. Because Co-Dx was already in the DNA-based testing business, the world's need for COVID-19 testing presented a unique opportunity to Co-Dx.

26. According to Co-Dx, it began developing its COVID-19 test rapidly using a technology called CoPrimer™, which was developed and patented by Satterfield before the outbreak. Co-Diagnostics used the CoPrimer™ technology to develop a COVID-19 diagnostics test within weeks.

27. Co-Dx, despite its relatively small size, became the first U.S. company to obtain a CE-marking for its COVID-19 test. The CE certification mark indicates conformity with

health, safety, and environmental protection standards for products sold within the European Economic Area.

28. On February 24, 2020, Co-Dx announced that its Logix Smart™ COVID-19 Test received a CE-marking, allowing it to be sold in the European market and other markets that accept CE-marking as valid regulatory approval.

29. On April 6, 2020, Co-Dx received approval from the U.S. FDA for its Logix Smart™ COVID-19 Tests under an Emergency Use Authorization, which permitted the test to be used by certified clinical laboratories in the U.S. for the diagnosis of COVID-19.

30. After Co-Dx obtained its approvals, it began selling millions of dollars' worth of its Logix Smart™ COVID-19 Test.[1]

31. Prior to developing its Logix Smart™ COVID-19 Test, Co-Dx had virtually no revenue. In fact, prior to the emergence of COVID-19, the Company's SEC filings admitted that beyond 2019, the Company did not have a plan for further research and development or any target diseases that it was aiming to create diagnostic tests for, but anticipated selling tests "based on need and regulatory barriers" in the United States.

32. In 2017, 2019, and 2019 Co-Dx had total *yearly* revenues of just $7,662, $39,911, and $214,974, respectively. The Company's revenue consisted primary of sales of testing equipment.

33. Upon commencing sales of its Logix Smart™ COVID-19 Test in late February and March of 2020, the test immediately became Co-Dx's sole material source of revenue.

[1] Each Logix Smart™ COVID-19 Test kit contains three components: (1) Logix Smart™ Master Mix (a proprietary blend of CoPrimers™ and PCR reagents), (2) Logix Smart™ Positive Control (a proprietary blend of synthetic templates), and (3) Nuclease-Free Water (water free of DNase/RNase activity).

34. In the quarter ended March 31, 2020 ("Q1 2020"), Co-Dx's revenue, which consisted primarily of sales of its Logix Smart COVID-19 Test, jumped to over $1.5 million after just a few weeks' worth of sales.

35. In the quarter ended June 30, 2020 ("Q2 2020"), the first full quarter in which the Company sold its Logix Smart™ COVID-19 Test, the Company reported revenues of over $24 million primarily due to sales of its Logix Smart™ COVID-19 Test, compared to $61,574 the prior year – a ***38,877.5% increase***. In fact, on an August 14, 2020 conference call with investors and analysts, Reed Benson, Co-Dx's former CFO, stated that "[t]he exponential and sudden growth in revenue . . . was due almost exclusively to the sales of our Logix Smart COVID-19 test."

36. As set forth in the following chart, upon commencing sales, its Logix Smart™ COVID-19 Test immediately accounted for nearly 100% of the Company's revenues:

Quarter	**Revenue**	**Percent Revenue Attributable to Sales of its Logix Smart™ COVID-19 Test[2]**	**Percent of Revenue Attributable to Sale of MDx Device (and Related Supplies) Sold to Customers to Facilitate Usage of its Logix Smart™ COVID-19 Test**
Q1 2020	$1.55 million	93.19%	6.81%
Q2 2020	$24.0 million	93.02%	6.98%
Q3 2020	$21.8 million	93.32%	6.68%
Q4 2020	$27.1 million	98.30%	1.70%
Q1 2021	$20.0 million	98.67%	1.33%
Q2 2021	$27.4 million	99.40%	0.60%
Q3 2021	$30.1 million	99.74%	0.26%
Q4 2021	$20.4 million	100%	0.00%
Q1 2022	$22.7 million	98.39%	1.61%

[2] The percentages in this chart are approximate because upon commencing sale of the Logix Smart COVID-19 Test, Defendants stopped disclosing revenues attributable to the non-COVID-19 tests Co-Dx previously sold, which amounts had historically been immaterial. *See* ¶32. Even assuming Co-Dx continued to sell its non-COVID-19 tests in line with historical trends, revenues attributable to those sales would have accounted for less than 1% of Co-Dx's revenue through at least the end of the Class Period. *Id*.

Q2 2022	$5.0 million	98.51%	1.49%
Q3 2022	$5.1 million	100%	0.00%
Q4 2022	$1.4 million	100%	0.00%
Q1 2023	$0.6 million	100%	0.00%
Q2 2023	$0.2 million	100%	0.00%

37. Prior to the Class Period, Defendants frequently touted demand for its Logix Smart™ COVID-19 Test. In fact, on May 13, 2021, concurrent with announcing its financial results for the quarter ended March 31, 2021, Co-Dx began a practice of offering revenue guidance for the upcoming quarter. These revenue guidance announcements typically occurred approximately halfway through the current quarter, and continued up until the start of the Class Period.

38. This practice continued, for example, in the Company's March 24, 2022 press release reporting the Company's full year 2021 financial results (the "March 24, 2022 Press Release"). The March 24, 2022 Press Release quoted Defendant Egan as stating: "Looking ahead, we believe that the demand for our COVID-19 tests and other diagnostic products will persist as our reputation has now been established and continues to grow among the diagnostic testing community and organizations implement COVID-19 testing as part of normal protocol" and provided revenue guidance in the range of $21.0 to $22.0 million for the first quarter of 2022.

C. Federal Funding Programs Supporting COVID-19 Testing Are Exhausted Prior to the Start of the Class Period

39. Since at least early 2020, around the same time Co-Dx began selling its Logix-Smart COVID-19 Test, various government funding programs and initiatives were put in place in order to increase access to COVID-19 diagnostic testing.

40. On March 13, 2020, then-President Trump declared the COVID-19 outbreak a national emergency. In response, Congress passed the Families First Coronavirus Response Act

and the Paycheck Protection Program and Health Care Enhancement Act, which together appropriated $2 billion to reimburse eligible hospitals and other health care providers for conducting COVID-19 testing and testing-related items and services for the uninsured.

41. Additionally, the Health Resources and Services Administration ("HRSA") COVID-19 Uninsured Program was established to reimburse health care providers directly for the costs of delivering COVID-19 testing (including lab-based PCR tests such as the Logix Smart™ COVID-19 Test) and treatment services and administering vaccines to those who are uninsured. Since the beginning of the pandemic, the program has provided approximately $24.5 billion in reimbursement for COVID-19 related uninsured claims, with approximately 60% of reimbursements for COVID-19 testing claims, 31% for treatment claims, and 9% for vaccine administration. However, in March 2022 the HRSA announced that due to lack of funding, the program would stop accepting reimbursement claims for COVID-19 testing and treatment services on March 22, 2022.

42. Despite continuous pleas from the Biden Administration, additional federal funding for COVID-19 testing was never passed by Congress and ran out by the end of March 2022—prior to the start of the quarter ended June 30, 2020 ("Q2 2022") (and the start of the Class Period).

V. FALSE AND MISLEADING STATEMENTS

43. The Class Period begins on May 12, 2022. On that date, after the market closed, the Company issued a press release and filed a report with the SEC on Form 8-K that disclosed its financial results for the quarter ended March 31, 2022 (the "May 12, 2022 Press Release"). The May 12, 2022 Press Release reported "Revenue of $22.7 million, primarily due to sales of the Logix Smart™ COVID-19 Test", representing a revenue increase of 13.5% as compared to $20.0 million during the prior year period.

44. The May 12, 2022 Press Release, issued approximately halfway through Q2 2022, announced Defendants' decision to stop providing quarterly guidance at that time based on various factors that purportedly affected their ability to accurately forecast demand for their Logix Smart™ COVID-19 test, and quoted Defendant Egan as stating:

> "***While we remain very confident about the long-term potential of our business, our ability to accurately forecast Logix Smart™ COVID-19 Test sales through the balance of the year has diminished due to decreased mask mandates in the United States, continued emergence and spread of new variants, and persistently low vaccination rates in many parts of the world. As a result, it has become difficult to predict with any level of precision the cumulative impact of these and other factors on our future financial results.*** For these reasons, we are not providing quarterly guidance at this time and will reassess this position in the future[.]"

45. On that same day, during a conference call with investors and analysts after the disclosure of Co-Dx's financial results, Defendant Brown similarly stated:

> Turning now to our visibility around the outlook for the balance of the year. While we experienced strong demand for our products during the first quarter of 2022, changes in our operating environment and markets have restricted our near term visibility. We will continue to navigate the near term environment with caution, but as a result, we'll not be providing quarterly guidance at this time.
>
> ***To be clear, we remain very confident about the long-term potential of our business and the demand for our products. Our ability to accurately forecast Logix Smart COVID-19 test sales through the balance of the year has diminished due to decreased mask mandates in the United States, continued emergence and spread of new variants and persistently low vaccination rates in many parts of the world.***
>
> ***Furthermore, we are experiencing sizable fluctuations in order patterns from our customers that are not cleanly captured in a particular quarter as testing requirements continue to vary across the many geographic regions we serve. As a result, it has become difficult to predict with an expected level of precision the cumulative impact of these and other factors on our future financial results.***

46. However, during the same conference call, in response to a question from an analyst regarding whether Defendants were already seeing a decline in customer orders,

Defendant Brown reassured investors regarding current demand for Logix Smart™ COVID-19 detection test:

> **[Analyst]:** "So with the Logix Smart detection test, are you already seeing a decline in customer orders? Or are you refraining from providing a guidance mainly because it's tough to like predict the environment moving forward?"
>
> **Defendant Brown**: "***It's more about the timing and being able to forecast the timing of orders is the bigger issue. It's not necessarily a demand issue that we're seeing. It's more of just timing of being able to accurately forecast what's coming in.***"

47. During the same conference call, Defendant Brown again reassured investors regarding demand for the Logix Smart™ COVID-19 Test through 2022:

> **[Analyst]:** "I just want to be clear on the guidance. I mean based on all the factors you laid out, it sounds like you don't expect demand for COVID-19 testing go away in 2022. You're just not sure the timing of when you will get the orders, but you still think there will be some level of demand for the remainder of the year. Is that accurate?
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> **Defendant Brown:** "***Yes, you're absolutely right.***"

48. The statements referenced above in ¶¶44-47 were materially false and/or misleading, and failed to disclosed material adverse facts about the Company at the time they were made because at the time Co-Dx was already experiencing a significant falloff in demand for its Logix Smart™ COVID-19 Test. Contrary to Defendants' representations, at the time of the above statements (1) demand for its Logix Smart™ COVID-19 Test had already plummeted, and (2) as a result, Defendants' positive statements about the demand for its Logix Smart™ COVID-19 Test lacked a reasonable basis. Specifically, Co-Dx's Q2 2022 revenue for the *entire quarter* was just $5 million, which represented a 81.55% decrease from the prior year, and a 77.97% decrease from the prior quarter. Even if Co-Dx had generated 100% of its Q2 2022 revenue by May 12, 2022 (the start of the Class Period), which is highly unlikely, it still would have represented a significant falloff in demand for its Logix Smart™ COVID-19 Test.

49. Also on May 12, 2022, Co-Diagnostics filed its Q1 2022 10-Q, signed by Defendants Egan and Brown. The Q1 2022 10-Q reported that "***[f]or the three months ended March 31, 2022, we generated revenues of $22,699,044, compared to revenues of $20,024,769 for the three months ended March 31, 2021. The increase in revenue of $2,674,275 was primarily due to sales of our Logix Smart™ COVID-19 test developed in response to the current COVID-19 pandemic.***"

50. The statement referenced above in ¶49 violated Item 303 of SEC Regulation S-K ("Item 303"). The objective of Item 303 is to require Management's Discussion and Analysis ("MD&A") of financial condition and results of operations "to provide material information relevant to an assessment of the financial condition and results of operations of the registrant. . . ." The MD&A "must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition." To that end, Item 303 required Defendants to "[d]escribe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." In violation of Item 303, Defendants' Q1 2022 10-Q MD&A failed to disclose (let alone provide the required "discussion and analysis" of) the uncertainty caused by the exhaustion of federal funding for COVID-19 testing by the end of March 2022. This uncertainty was reasonably likely to have, and by May 12, 2022, ***already had***, a material unfavorable impact on Co-Dx's revenues. Indeed, after the Class Period, Defendant Egan stated that Defendants believed that the reduction in government funding for testing programs was one of the primary reasons for lower sales of their Logix Smart™ COVID-19 Test. *See* ¶56.

51. On June 15, 2022, just two weeks before the close of Q2 2022, Defendants Egan and Brown presented at the Sidoti Summer 2022 Small Cap Virtual Conference. During the Q&A portion of the presentation, Defendant Egan again reassured investors regarding continued demand for COVID testing products throughout 2022 and 2023:

> **Sidoti:** "And if you look at the other side of the business - the centralized lab test that you're selling now. Do you think there will be demand for covid type testing for at least the next year or two?"
>
> **Defendant Egan:** "Well, you know the experts tell us that covid testing is gonna be – and, you know, the covid virus is gonna be with us until the end of time, and so, you know, we've had, ***I think we're gonna have continued demand, where every kind of technology, the centralized lab type approach as well as the at home point of care, they're all gonna used to their highest and best use, and they're gonna be complementary to each other***. So we don't, in fact, view that the introduction of our testing technology will obviate the need for centralized Labs."

52. The statements referenced above in ¶51 was materially false and/or misleading, and failed to disclose material adverse facts about the Company at the time they were made because at the time Co-Dx was already experiencing a significant falloff in demand for its Logix Smart™ COVID-19 Test. Contrary to Defendants' representations, at the time of the above statements (1) demand for its Logix Smart™ COVID-19 Test had already plummeted, and (2) as a result, Defendants' positive statements about the demand for its Logix Smart™ COVID-19 Test lacked a reasonable basis. Specifically, Co-Dx's Q2 2022 revenue for the *entire quarter* (which ended two weeks later) was just $5 million, which represented a 81.55% decrease from the prior year, and a 77.97% decrease from the prior quarter.

53. Also on June 15, 2022, during the Sidoti Summer 2022 Small Cap Virtual Conference presentation, Defendant Brown presented a slide titled "Financial Status Q1 2022". Defendant Brown used the slide to tout the Company's "***growth from Q1 to Q1 2021 to 2022 in revenue***", noting that "***in 2021 we had $20.0 million in revenue for Q1 and in Q1 of 2022 we***

had $22.7 [million] which represents about a 13.5% increase in revenue quarter over quarter, year over year."

54. Additionally, Defendant Brown touted the Company's Adjusted EBITDA, which was "***$11.4 million for both Q1 of '21 and Q1 of 2022.***" Defendant Brown stated that this was "***one of the most impressive things that we've been able to do; take on a significant amount of additional expenses but still continue to maintain our adjusted EBITDA for the company and I think this information we've provided here on the company from a financial perspective really shows the strength of what we've done and what we've built here at Co-diagnostics***" because "at the end of 2021 we acquired two companies that were helping develop our new product that we're launching. And, in Q1 of 2021 we did not have any expenses related to those two entities, where in Q1 of 2022 we had a full quarter's worth of twice as many employees and a significant increase in R&D."

55. The statements referenced above in ¶¶53-54 were materially false and/or misleading, and failed to disclosed material adverse facts about the Company at the time they were made because at the time Co-Dx was already experiencing a significant falloff in demand for its Logix Smart™ COVID-19 Test. Contrary to Defendants' representations, at the time of the above statements (1) demand for its Logix Smart™ COVID-19 Test had already plummeted, and (2) as a result, Defendants' positive statements about the Company's prospects, including continuing year-over-year revenue growth and ability to maintain its Adjusted EBITDA were false and materially misleading. Specifically, Co-Dx's Q2 2022 revenue for the *entire quarter* (which ended two weeks later) was just $5 million, which represented a 81.55% decrease from the prior year, and a 77.97% decrease from the prior quarter. As a result, Co-Dx's Q2 2022

Adjusted EBITDA had in fact evaporated, down from $12.9 million during the prior year period, and $11.7 million in First Quarter 2022, to a *loss* of $2.3 million.

VI. THE TRUTH BEGINS TO EMERGE

56. On August 11, 2022, after the market closed, Co-Dx issued a press release and filed a report with the SEC on Form 8-K that disclosed its Q2 2022 financial results, and conducted a conference call with investors and analysts. Defendants shocked investors by disclosing revenue of just $5.0 million for Q2 2022, down from $27.4 million during the prior year period, a decline of almost 82%. Defendants also disclosed an Adjusted EBITDA *loss* of $2.3 million, down from $12.9 million during the prior year period. The Company primarily attributed the decrease to lower demand of the Logix Smart™ COVID-19 Test. Specifically, Defendant Egan was quoted as stating that "[o]ur second quarter results reflect lower volumes for our Logix Smart™ COVID-19 Test, which we believe is primarily the result of a reduction in mandated testing in travel and public venues and in government funding for testing programs."

57. On an August 11, 2022 conference call with investors and analysts, Defendant Egan admitted that, contrary to their Class Period representations, Defendants were aware of the reduced demand for their Logix Smart™ COVID-19 Test throughout the quarter:

> **[Analyst]:** Do you have any sense on what inventory levels are at your distributors? Do you think the second quarter was a quarter where distributors let inventory levels come down as demand declined? And do you think that they're at historically low levels at this point and likely to restock? Or do you think that they have enough inventory on hand from the current level of demand?
>
> **Defendant Egan:** And of course, one that **we keep a close eye on every day**. And **we certainly saw the -- as the second quarter progressed, the falloff and we've cited the reasons we think that falloff occurred** in terms of public funding of testing initiatives and just the swaging of the pressure put on by Omicron. . . .

58. On August 12, 2022, the price of Co-Dx's common stock declined $1.98, or 30.65%, from a closing price of $6.46 per share on August 11, 2022 to close at $4.48 per share on August 12, 2022.

59. As alleged above in ¶36, demand for the Logix Smart™ COVID-19 tests has never recovered, and Co-Dx has announced reduced revenue in every subsequent quarter, primarily due to lower demand for the Logix Smart™ COVID-19 Tests.

60. Today, Co-Dx is in nearly the same position it was before it began selling its Logix Smart™ COVID-19 test: it is a publicly traded company with virtually no material revenue.

VII. LOSS CAUSATION/ECONOMIC LOSS

61. During the Class Period, as detailed herein, Defendants deceived the market through a course of conduct that artificially inflated Co-Dx's stock price and operated as a fraud or deceit on Class Period purchasers of Co-Dx stock by misrepresenting Co-Dx's financial condition, results of operations and business prospects. Defendants achieved this by making positive statements about the Company's business and demand for its products, while they knew, or at least recklessly disregarded, that the Company was experiencing material negative conditions that impaired its financial condition, results of operations and business prospects. Later, however, when Defendants' prior misrepresentations were disclosed and became apparent to the market, the price of Co-Dx stock fell precipitously as the prior artificial inflation came out of Co-Dx's stock price.

62. As a result of their purchases of Co-Dx stock during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

63. As a direct result of the public revelations regarding the truth about the condition of Co-Dx's business and the negative adverse factors that had been impacting Co-Dx's business during the Class Period, the price of Co-Dx's stock materially declined. This drop removed the inflation from Co-Dx's stock price, causing real economic loss to investors who purchased the stock during the Class Period.

64. The decline in Co-Dx's stock price at the end of the Class Period was a direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of Co-Dx's stock price decline negate any inference that the loss suffered by Plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to the Defendants' fraudulent conduct.

VIII. ADDITIONAL SCIENTER ALLEGATIONS

65. As alleged herein, Defendants acted with scienter in that Defendants knew that their own statements, and the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Co-Dx, their control over, and/or receipt and/or modification of Co-Dx's allegedly materially misleading misstatements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Co-Dx, participated in the fraudulent conduct alleged herein. Defendants knew or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public.

A. Defendants Had Access to Information Undermining Their Statements

66. As CEO and CFO of Co-Dx, Defendants Egan and Brown, respectively, had full access to the Company's books and records, which reflected the Company's top-line revenues. Before and throughout the Class Period Co-Diagnostics recognized revenue related to the sale of its Logix Smart™ COVID-19 test upon delivery to its distributors. The Company's top-line revenues undermined their Class Period statements at the time they were made. Not only did Defendants Egan and Brown have access to such information, Defendants have ***admitted that they tracked this information daily***. As Defendant Egan admitted after the Class Period concerning their monitoring of distributor inventory and demand for its Logix Smart™ COVID-19 test: "And of course, one that ***we keep a close eye on every day***. And ***we certainly saw the--as the second quarter progressed, the falloff [in demand for our Logix Smart™ COVID-19 Test]*** and we've cited the reasons we think that falloff occurred . . . ." *See* ¶57. Consistent with this admission, on a May 13, 2021 conference call with investors and analysts, Defendant Egan similarly confirmed that they tracked daily demand for their Logix Smart™ COVID-19 Test: "While we observe the daily infection and death counts around the world, ***we are also, of course, able to monitor the daily influx of demand for our tests*** . . . ."

B. The Sale of its *Logix Smart*™ COVID-19 Test Was the Company's Core Operation Because it Was the Company's Sole Source of Material Revenue Before, During, and After the Class Period

67. Defendants' false and misleading statements concern critical aspects of Co-Diagnostic's core operations. Before, during, and after the Class Period, its Logix Smart™ COVID-19 Test was its ***only*** source of material revenue and was critical to the Company's performance. ¶36.

68. Defendants stated in its SEC filings before, during, and after the Class Period that "***[o]ur near-term success has been dependent on the market for our COVID-19 tests and***

future success is dependent on continued demand for COVID-19 diagnostics and upon our ability to develop and market other commercially accepted diagnostic tests." Defendants further stated in those SEC filings that "***[a]ny failure to continue sales of our tests in sufficient quantities to maintain profitability would adversely affect our operating results.***"

69. Given that the sale of its Logix Smart™ COVID-19 Test was a core operation of the Company, Defendants knew of, or recklessly disregarded the drop in demand for their Logix Smart™ COVID-19 Test that had already occurred at the time of the Class Period statements.

C. Defendants Turned a Blind Eye to Red Flags, Which Supports a Strong Inference of Scienter

70. Since at least early 2020, around the same time Co-Dx began selling its Logix-Smart COVID-19 Test, various government funding programs and initiatives were put in place in order to increase access to COVID-19 diagnostic testing.

71. On March 13, 2020, then-President Trump declared the COVID-19 outbreak a national emergency. In response, Congress passed the Families First Coronavirus Response Act (FFCRA) and the Paycheck Protection Program and Health Care Enhancement Act (PPP), which together appropriated $2 billion to reimburse eligible hospitals and other health care providers (providers) for conducting COVID-19 testing and testing-related items and services for the uninsured.

72. Additionally, the Health Resources and Services Administration ("HRSA") COVID-19 Uninsured Program was established to reimburse health care providers directly for the costs of delivering COVID-19 testing (including lab-based PCR tests such as the Logix Smart™ COVID-19 Test) and treatment services and administering vaccines to those who are uninsured. Since the beginning of the pandemic, the program has provided approximately $24.5

billion in reimbursement for COVID-19 related uninsured claims, with 60% of reimbursements for COVID-19 testing claims, 31% for treatment claims, and 9% for vaccine administration. However, in March 2022 the HRSA announced that due to lack of funding, the program would stop accepting reimbursement claims for COVID-19 testing and treatment services on March 22, 2022.

73. Despite pleas from the White House, additional federal funding for COVID-19 testing was never passed by Congress, and ran out by the end of March 2022—prior to the start of Second Quarter 2022 (and the start of the Class Period).

74. As such, Defendants were on notice that the Company's revenues were likely to be materially impacted. This was a red flag that should have alerted Defendants to the decrease in demand for its Logix Smart™ COVID-19 Test and that the Company was in fact experiencing a material negative impact on its revenues, as opposed to a mere issue "of just timing of being able to accurately forecast what's coming in". *See* ¶46. In fact, after the Class Period, Defendant Egan stated that Defendants believed the reduction in government funding for testing programs was one of the primary reasons for lower sales of their Logix Smart™ COVID-19 Test. *See* ¶56.

D. The Magnitude of the Drop in Revenue Supports a Strong Inference of Scienter

75. The magnitude of the drop in revenue and the impact on Co-Dx's financials are indicative of Defendants' scienter. At the end of the Class Period, on August 11, 2022, Defendants disclosed that its Q2 2022 revenue had plummeted to $5 million, down from $27.4 million during the prior year period, a decline of almost 82%. Defendants also disclosed an Adjusted EBITDA *loss* of $2.3 million, down from $12.9 million during the prior year period. Defendants also disclosed a Q2 2022 net *loss* of $2.7 million, compared to a net income of $9.8

million during the prior year period.

IX. FRAUD-ON-THE-MARKET DOCTRINE

76. At all relevant times, the market for Co-Dx's common stock was an efficient market for the following reasons, among others:

(a) The Company's common stock met the requirements for public listing and was listed and actively traded on the Nasdaq, a highly efficient market;

(b) As a regulated issuer, the Company filed periodic public reports with the SEC;

(c) The Company regularly issued press releases which were carried by national news wires. Each of these releases was publicly available and entered the public marketplace; and

(d) A number of securities analysts regularly followed and analyzed the Company, and issued reports concerning the Company.

77. As a result, the market for the Company's publicly traded common stock promptly digested current information with respect to Co-Dx from all publicly available sources and reflected such information in the price of the Company's common stock. Under these circumstances, all purchasers of the Company's publicly traded common stock during the Class Period suffered similar injury through their purchase of the publicly traded common stock of Co-Dx at artificially inflated prices and a presumption of reliance applies.

X. CLASS ACTION ALLEGATIONS

78. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of a class of all persons and entities who purchased the publicly traded securities of Co-Dx during the Class Period.

79. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at the present time and can only be ascertained through appropriate discovery, Plaintiff believes that there are

hundreds of members of the Class located throughout the United States. As of August 9, 2022, Co-Dx had over 33 million shares of common stock outstanding, which were actively traded on the Nasdaq in an efficient market.

80. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained damages because of Defendants' unlawful activities alleged herein. Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to pursue this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff. Plaintiff has no interests which are contrary to or in conflict with those of the Class that Plaintiff seeks to represent.

81. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

82. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts and omissions as alleged herein;

(b) whether Defendants misstated and/or omitted to state material facts in their public statements and filings with the SEC;

(c) whether Defendants participated directly or indirectly in the course of conduct complained of herein; and

(d) whether the members of the Class have sustained damages and the proper measure of such damages.

XI. NO SAFE HARBOR

83. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

84. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward looking statement was false, or the forward-looking statement was authorized and/or approved by an executive officer of Co-Dx who knew that those statements were false when made.

FIRST CLAIM FOR RELIEF
For Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Against All Defendants

85. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

86. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were materially false and misleading in that they contained material misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

87. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) Employed devices, schemes and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Co-Dx publicly traded common stock during the Class Period.

88. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Co-Dx's publicly traded common stock. Plaintiff and the Class would not have purchased Co-Dx common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

89. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of Co-Dx common stock during the Class Period.

SECOND CLAIM FOR RELIEF
For Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants

90. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

91. The Individual Defendants acted as controlling persons of Co-Dx within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which

Plaintiff contends are false and misleading. The Individual Defendants were provided with, or had unlimited access to, copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

92. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

93. As set forth above, Co-Dx and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions each as a controlling person, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Co-Dx's and the Individual Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows: declaring this action to be a proper class action; awarding damages, including interest; awarding reasonable costs, including attorneys' fees; and such equitable/injunctive relief as the Court may deem proper.

XIII. JURY DEMAND

Plaintiff demands a trial by jury.

Dated: September 21, 2023

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